SUPREME COURT OF THE UNITED STATES.

No. 432.

THE NATIONAL BANK OF THE METROPOLIS, PLAINTIFF IN ERROR,

vs.

JAMES C. KENNEDY, RECEIVER OF THE MERCHANTS' NATIONAL BANK, ETC.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

		Original.	Print.
Writ of error		3	1
Declaration		4	1
Declaration, subpœna to answer		7	2
Defendant's pleas		9	3
Joinder of issue		9	3
Plea of set-off		10	4
Plaintiff's first and second prayers		13	5
Verdict of jury		16	6
Motion for new trial, and reasons therefor		16	6
Additional reasons for new trial		18	6
Defendant's bills of exceptions, No.	1	19	7
	2	29	10
	3	31	11
	4	32	11
Plaintiff's statement of evidence		34	11
Defendant's bills of exceptions, No.	5	36	12
	6	40	13
	7	41	13
	8	44	14
	9	47	15
	10 and prayers	49	19
Defendant's statement of evidence		56	18
Defendant's testimony		66	20
	Deposition of J. B. Hutchinson	67	21
	A. S. Frissell	80	24
Attachment.	Affidavits for	88	27
	Bond for	90	27
	Writ of	91	28

	Original.	Print.
Attachment, writ of, Return of	92	28
Notice of motion to quash	93	29
Affidavit of Theodore M. Davis	94	29
Motion to quash	99	30
Order to quash	99	31
Appeal from	100	31
Decree of general term	101	31
Bond of appeal to Supreme Court United States	102	31
Clerk's certificate	103	32

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between James C. Kennedy, receiver of the Merchants' National Bank of Washington, D. C., plaintiff, and The National Bank of the Metropolis, of Washington, D. C., *is* defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears, and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, this 29th day of November, in the year of our Lord 1870, and of the independence of the United States the 95th.

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To James C. Kennedy, receiver of the Merchants' National Bank of Washington, D. C.:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein The National Bank of the Metropolis, of Washington, D. C., is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
Ch'f Justice.

I acknowledge service of this citation, November 29, 1870.

R. T. MERRICK.

4 *Declaration.—Filed January 7th*, 1867.

In the supreme court of the District of Columbia.

JAMES C. KENNEDY, RECEIVER OF THE MERchants' National Bank of Washington,
vs.
THE NATIONAL BANK OF THE METROPOLIS. } At law. No. 3421.

James C. Kennedy, receiver of the Merchants' National Bank, of Washington City, duly appointed under and by virtue of an act of

Congress as such receiver, brings suit against the said The National Bank of the Metropolis, a body corporate under and by virtue of an act of the Congress of the United States, defendant; and thereupon the said plaintiff says, that whereas the said The National Bank of the Metropolis, on the first day of May, A. D. 1866, to wit, at the county of Washington, in the District of Columbia, was indebted to the said The Merchants' National Bank, of Washington City, a body corporate
5 under and by virtue of the laws of the United States, in the sum of ($30,000) thirty thousand dollars, for money loaned by the said The Merchants' National Bank to the said defendant; for money found due to the said The Merchants' National Bank from the said defendant, on an account stated between them; for money had and received by the said defendant to the use of the said The Merchants' National Bank; and for money payable by the said defendant to the said The Merchants' National Bank; and, being so indebted in consideration thereof, to wit, on the day and year aforesaid, at the county aforesaid, undertook and faithfully promised the said The Merchants' National Bank to pay it the said sum of money when *he* should be thereto requested.

Nevertheless the said defendant hath not paid the aforesaid sum of money, or any part thereof, to the said The Merchants' National Bank, nor to the said James C. Kennedy, receiver as aforesaid, since his appointment as such receiver; but to pay the same hath hitherto wholly refused, and doth still refuse, so to do.

6 And the said James C. Kennedy, as receiver as aforesaid, claims ($50,000) fifty thousand dollars, according to the annexed particulars of demand.

And the said James C. Kennedy brings into court here the letter of appointment granted to him, the said James C. Kennedy, whereby it sufficiently appears that he is receiver, as aforesaid.

BRENT & MERRICK,
Attorneys for Plaintiff.

The defendant is to plead hereunto on or before the first special term of the court, occurring twenty days after service hereof; otherwise, judgment.

BRENT & MERRICK,
Attorneys for Plaintiff.

Particulars of demand.

For money loaned	$50,000
Money had & received	50,000
Money due on acc't stated	50,000

7 *S'p'a to answer.—Issued 7th Jan'y*, 1867.

In the supreme court of the District of Columbia, the 7th day of January, 1867.

JAMES C. KENNEDY, RECEIVER, &C., PLAINTIFF,
v.
THE NATIONAL BANK OF THE METROPOLIS, DEFENDANTS. } At law. No. 3421.

The President of the United States to the marshal for said district, greeting:

Summon the defendant in the above-entitled case to appear, on or be-

fore the first special term thereof occurring twenty days after service of this writ, and answer the declaration herewith served; and warn him that, on default of so doing, the plaintiff may proceed to judgment and execution at the trial term of said court next after said service. And do you return this writ into the clerk's office, immediately after service, so indorsed as to show the time and manner of executing it; and if you cannot serve it within six months, the day of its issuance ex-
8 clusive, then return it into said office for renewal.

Witness D. K. Cartter, chief justice of said court.

R. J. MEIGS, *Clerk.*

BRENT & M.:

NOTE.—That the special terms of the court commence every Tuesday of every month, except May, in which month they commence on the third Monday, and August, in which month there is no term of the court; and that the trial terms of the court commence on the first Tuesday of February, third Monday of May, and first Tuesday of November, when final judgments may be taken and execution awarded.

Marshal's return.

"Served copy of summons and declaration on J. B. Hutchinson, cashier of the bank.

"D. S. GOODING, *Marshal.*

"JAN'Y 14TH, 1867."

9 *Defendant's pleas.—Filed 5th Feb'y, 1867.*

In the supreme court of the District of Columbia.

JAMES C. KENNEDY, RECEIVER,
vs.
THE NATIONAL BANK OF THE METROPOLIS. } At law. No. 3421.

The defendant, by its attorney, Nath'l Wilson, says that it never was indebted as alleged.

And for a second plea, the defendant, by its attorney, Nathaniel Wilson, say that he did not promise as alleged.

NATH'L WILSON,
Att'y for Def'ts.

Joinder of issue.—Filed 18 *February*, 1867.

JAMES C. KENNEDY, RECEIVER OF MERCHANTS' National Bank of Washington,
vs.
NATIONAL BANK OF THE METROPOLIS. } At law. No. 3421.

The plaintiff takes issue upon the defendant's pleas.

BRENT & MERRICK,
Attorneys for Pl'ff.

10 *Notice to clerk of last pleading.—Filed 18th Feb'y, 1867.*

In the supreme court of the District of Columbia, the eighteenth day of February, 1867.

JAMES C. KENNEDY, RECEIVER OF THE MERchants' National Bank of Washington, plaintiff,
and
THE NATIONAL BANK OF THE METROPOLIS, defendant. } At law. No. 3421.

Last pleadings filed the 18th day of February, 1867.

BRENT & MERRICK,
For Pl'ff.

Proceedings of the circuit court of the D. C., April 11, 1868.

JNO. C. KENNEDY, RECEIVER,
vs.
THE NATIONAL BANK OF THE METROPOLIS. } 3421. At law.

On motion of the defendant, by its attorney, is granted to file the plea of set-off in bar of the suit.

11 *Plea of set-off.—Filed April 11, 1868.*

In the supreme court of the District of Columbia.

KENNEDY, RECEIVER,
vs.
THE NATIONAL BANK OF THE METROPOLIS. } 3421. At law.

And for a further plea, defendant says that the said Merchants' National Bank, at the commencement of said suit, was and still is indebted to the defendant in the sum of five thousand dollars ($5,000,) for that the said Merchants' National Bank, heretofore, to wit, on the third day of May, in the year of our Lord one thousand eight hundred and sixty-six, made a certain bill of exchange, bearing date the day and year last aforesaid, upon the Ocean National Bank of New York, whereby the said Merchants' National Bank requested the said Ocean National Bank to pay to the order of H. L. Robinson, bv't brig. gen'l, A. Q. M., five thousand dollars, which said bill of exchange and order, the said Merchants'
12 National Bank, afterwards, to wit, on the day and year last aforesaid, and at the county of Washington aforesaid, delivered to the said H. L. Robinson, and which said bill of exchange and order, the said H. L. Robinson, afterwards, to wit, on the day and year last aforesaid, and at the county aforesaid, endorsed and delivered to the said defendant, and which said bill of exchange and order, when the same became due and payable, according to the tenor and effect thereof, to wit, on the sixth day of May, at the city of New York, and in the State of New York, was presented and shown to the said Ocean National Bank, for payment thereof, but the said Ocean National Bank then and there neglected and refused to pay the said sum of money in said bill of exchange and order specified, whereof the said plaintiff afterwards, to wit, on the day and year last aforesaid, and at the county of Washington aforesaid, had notice, and the said defendant is willing that the same

may be set off against the said plaintiff's demand, if any, and for any balance due after the said set-off, this defendant prays judgment
13 against the plaintiff, in pursuance of the statute in such case made and provided.

DAVIDGE & WILSON,
For Def't.

Plaintiff's prayers.—Filed Dec. 1868.

PRAYER NO. 1.

If the jury find from the evidence, that the loan of the 27th of Feb'y, of $20,000 was made by Hutchinson, president of the Nat'l Bank of the Metropolis, to the Merchants' National Bank, for the understood and agreed purpose of being used by the latter to purchase a portion of the shares of its own capital stock, which shares were at the time hypothecated with def't as security for the loan, and was in fact so used, then such loan was contrary to law, and the National Bank of the Metropolis cannot claim a credit therefor on the check of Robinson of the 1st of May for $50,000.

Overruled.

D. K. CARTTER.
Chief Justice.

14 2D PRAYER.

If the jury find from the evidence aforesaid, that the loan made by the defendant on the 27th Feb'y, 1866, as stated in the evidence, was intended and understood, between the defendant and said Sherman, as a loan to the bank, then said loan was not binding on said Merchants' National Bank, unless the jury shall find that the proceeds of said loan went to and were applied to the use and benefit of said Merchant's Bank otherwise than by its having credited said drafts at par to Zephaniah English as cash, in the manner stated by said Sherman, and having collected the said drafts to reimburse the cash so advanced thereon to English.

Overruled.

D. K. CARTTER,
Chief Justice.

15 *Proceedings of the court.*

MONDAY, *December* 21, 1868.

KENNEDY, RECEIVER,
vs.
THE NAT'L BANK OF THE METROPOLIS. } 3421. At law.

And now come here, as well the plaintiff as the defendant, by their respective attorneys—Brent & Merrick for plaintiff, and Davidge & Wilson for defendant—and a jury of good and lawful men of this district, to wit, William F. Given, William Warden, Isaiah Brissey, C. W. Dulin, Jonathan Kirkwood, Horace J. Gray, Robert Sareton, John W. Eli, John Eliason, Daniel J. Serrin, William Hess, and J. S. McKenney, who, being sworn to try the issue above joined, are respited till ten to-morrow morning.

16 *Verdict of jury.*

THURSDAY, *December* 31, 1868.

J. C. KENNEDY, RECEIVER,
vs.
THE NAT'L BANK OF THE METROPOLIS. } 3421. At law.

And now again come here the parties, by their respective attorneys aforesaid, and the same jury who were respited yesterday, and the said jury having received the instructions of the court, upon their oath, say they find the issue above joined in favor of the plaintiff, and that the money payable to the plaintiff by the defendant, by reason of the premises, is twenty thousand dollars, with interest from May 2, 1866, besides costs.

Motion for a new trial.—Filed Dec. 31, 1868.

JA'S C. KENNEDY, RECEIVER,
vs.
THE NAT'L BANK OF THE METROPOLIS. } 3421. At law.

The defendant, by its attorneys, Davidge and Wilson, comes and moves the court for a new trial in the above-entitled case:

17 1st. Because the court refused to grant the fourth, fifth, sixth, seventh and eighth, ninth and tenth of the instructions, as prayed by the defendant.

2d. Because the court granted the plaintiff's first, third, and fourth instructions, as qualified by the court.

3d. Because the court refused to qualify the plaintiff's first instructions, as prayed by the defendant, but granted the same as qualified by the court.

4th. Because the court erred in admitting evidence objected to by the defendant, as appears from the defendant's bill of exceptions.

5th. Because the plaintiff is not entitled to maintain an action in his own name, as receiver, for a debt due from the defendant to the Merchant's National Bank.

6th. Because the said case was not at the time of the trial thereof, and by the rendition of the verdict against the defendant, at issue, according to the rules of this conrt.

DAVIDGE & WILSON,
Att'ys for Defendant.

18 *Additional reasons for new trial.—Filed Jan'y 5th,* 1869.

KENNEDY, RECEIVER,
vs.
THE NAT'L BANK OF THE METROPOLIS. } 3421. At law.

The defendant comes and files the following additional reasons for new trial:

1st. Because the verdict was rendered upon insufficient evidence.

2d. Because the verdict was against the weight of evidence.

3. Because of error of law, as shown by the exceptions taken by the defendant, pending the trial.

DAVIDGE & WILSON,
Att'ys for Def't.

19 *Defendant's bill of exceptions.*

JAMES C. KENNEDY, RECEIVER,
vs.
THE NAT'L BANK OF THE METROPOLIS. } 3421. At law.

At the trial of this cause the plaintiff gave evidence tending to show that, on the 1st day of May, 1866, Maj. Gen. H. L. Robinson, assistant quartermaster of the United States, deposited with the Merchants' National Bank his check of that date, and drawn on the National Bank of the Metropolis in favor of the Merchant's National Bank or order, and for $50,000, and that on said day the amount of said check was passed by the Merchants' National Bank, on its books, to the credit of said Robinson, as assistant quartermaster, and that, on the presentment on the said day of said check for payment by the runner of the Merchants' National Bank to the National Bank of the Metropolis, A. L. Frissell, the assistant cashier of the latter bank, delivered to said
20 runner the following currency and evidences of debt: $5,000, in currency; the check of J. L. Hodge, paymaster, for $10,000; a sight d'f't for $9,630 87; the check of Charles A. Sherman for $5,000; and a check for $162 01; and the demand note of said Sherman, with the memorandum endorsed thereon for $20,000; and a certificate of stock in said Merchants' National Bank for 200 shares, copies of which note, memorandum, and certificate are hereunto annexed, marked A and B, and made part hereof; and at the same time delivered to said runner a pencil memorandum in the handwriting of said Frizzel, a copy of which memorandum is hereunto annexed, marked C, and made part hereof, and received possession from said runner of said check for $50,000; and that the amount thereof was, on the same day, charged by the defendant to the debit of said Robinson, assistant quartermaster, in the account current which he then and before had with said National Bank of the Metropolis.

That, upon the return of said runner to the Merchants' Na-
21 tional Bank, the teller of said bank refused to receive the said currency and evidences of debt in payment of said Robinson check, and handed the same to Charles A. Sherman, the cashier of said bank. The pl'ff further gave evidence by said Sherman to shew that on said day he received from said teller said currency, evidences of debt, certificate, and memorandum, and on the same day, shortly after bank hours, repaired to the banking house of the National Bank of the Metropolis, taking with him said $20,000 note, checks, currency certificate, and memorandum, enclosed in an envelope, and asked for John B. Hutchinson, the cashier of said bank, and was informed he had gone home; but that said Sherman, at said banking house, then saw said Frissell, the assistant cashier, between three and four o'clock p. m., and complained to him that the transaction in which the said note for $20,000 and certificate were given was the *u*ndividual transaction of him, the said Sherman, and not as cashier or agent of said Merchants'
22 National Bank; and further stated that for said reason the said $20,000 note and certificate had been refused as part payment of said Robinson check, and then and there tendered the return of said $20,000 note, checks, evidence, and certificate, and demanded currency in lieu thereof, and at the time of such tender took said note and certificate out of said envelope, but that said Frissell refused to receive back said note, checks, and currency, and certificate, or to give currency in lieu thereof, alleging that the transaction in which said note and certificate were given was that the Merchants' National Bank, acting by said

Sherman, its cashier or agent, and not the individual transaction of said Sherman; that thereupon said Sherman left said banking house, taking with him said $20,000 note, checks, currency, certificate, and memorandum, which he kept until next day, when he saw said Hutchinson, who then said that he declined to take back said note of said Sherman as he regarded it as a loan to said Sherman's bank, and then deposited
23 the said $20,000 note, certificate, and memorandum in the vaults of his bank, where the' remained until the failure of his bank on the 4th of May, 1866, and afterwards until the appointment of the pl'ff as receiver, when they were taken possession of by him as such receiver, who has since held the same; and that the said currency, $5,000 check, $10,000 check, & dr'ft for $9,630 87, and check for $162 01, were retained by said Merchants' National Bank in part payment of said Robinson check.

The plaintiff further offered evidence by said Sherman tending to shew that, on the morning of the 27th of February, 1866, he informed said Hutchinson, cashier of the National B'k of the Metropolis, that he, Sherman, had an opportunity of purchasing two hundred shares of the stock of the Merchants' National Bank, and, to enable him to do so, wanted a loan of $20,000 upon the said stock, and that by said purchase he could secure the dividend of $1,000 which had been declared upon said stock on the 9th of the previous January; and that upon said application said Hutchinson consented to make said loan, and not
24 to call for the money until the 1st of July following, and to give ample notice when the money would be wanted; and that, upon receiving said consent, witness went to the Merchants' National Bank, and received the certificate of stock offered in evidence from Leonard Huyck, the president of said bank, and returned with the same to the National Bank of the Metropolis, and then signed the $20,000 note offered in evidence, and deposited the said certificate as collateral security therefor; and that the said National Bank of the Metropolis, being short of currency, it was proposed by said Hutchinson that witness should take, in lieu thereof, two drafts, each for $10,000, & drawn upon Balto. & Phila., to which he assented, and that thereupon the said drafts were made out by said Frissell, and delivered to the witness, and that said drafts were to the following tenor and effect:

No. 347.] NATIONAL BANK OF THE METROPOLIS,
Washington, D. C., Feb'y 27, 1866.

Pay to the order of C. A. Sherman, esq., cashier, ten thousand dollars.

A. L. FRISSELL,
A. Cashier.

To FARMERS & MERCHANTS' NAT. BANK,
Baltimore, Md.

$10,000.

[Stamp.]

25 No. 348.] NATIONAL BANK OF THE METROPOLIS,
Washington, D. C., Feb'y 27, 1866.

Pay to the order of C. A. Sherman, esq., cashier, ten thousand $\frac{00}{100}$ dollars.

A. L. FRISSELL,
A. Cashier.

To CENTRAL NAT'L BANK,
Philadelphia.

[Stamp.]

And were both endorsed by C. A. Sherman as cashier; and the said drafts having been read to the jury, the said witness further testified that the proceeds of said drafts, when paid, went to the credit of the said Merchants' National Bank; and thereupon the pl'ff, by his counsel, asked the witness what took place when the drafts were about to be drawn between him and Hutchinson or Frissell in regard to the form of the drafts, to the admissibility of which evidence the defendant, by his counsel, objected; but said objection was overruled, and the witness was allowed to testify that, when the drafts were about to be drawn,

Hutchinson asked him how he would have them—in his individ-
26 ual capacity or as cashier, and that thereupon witness said that as he would have to send them away he would have them in his official capacity, so as to save an endorsement; and that for that reason the said drafts were so made out; to which ruling and the admissability of said evidence the def't excepts, and prays the court to sign, seal, and cause to be enrolled this his 1st bill of exceptions, which is accordingly done this 29th of December, 1868.

D. K. CARTTER, [SEAL.]
Chief Justice.

EX. A.

$20,000.] WASHINGTON, D. C., *Feb'y* 27, 1866.

On demand, after date, I promise to pay, to the order of J. R. Hutchinson, cashier, twenty thousand dollars, at the National Bank of the Metropolis. Value received, with interest.

C. A. SHERMAN.

No. . Due

[U. S. int. rev. stamp, $5 cancelled. U. S. int. rev. cancelled.]

(Endorsed:)

As collateral security I deposit with J. B. Hutchinson, cash.,
27 certificate No. 38 for 200 shares stock Merchants' National B'k to ensure the prompt payment of this obligation.

C. A. SHERMAN.

EXHIBIT B.

200 shares.]

Authorized capital, $200,000. Shares $100 each. } THE MERCHANTS' NATIONAL BANK OF WASHINGTON, D. C. { Organized under act of Congress, approved June 3d, 1864.

APRIL 4*th*, 1865.

Be it known that Zeph. English, esq'r., is entitled to two hundred shares of one hundred dollars each, in the capital stock of the Merchants' National Bank of Washington, D. C., transferable only on the books of the bank by him or his attorney, on the surrender of this certificate.

{ SEAL OF BANK. } L. HUYCK, *Cashier.*
W'M , *President.*

No. 38.]

[Internal rev. stamp, 25 cts., cancelled.]

28 (Endorsed:)

For value received, hereby sell, assign, and transfer to

, shares of the within mentioned stock, and do hereby constitute and appoint , attorney, to transfer the same on the books of the bank.

Witness hand and seal this day of , A. D. 18 .

ZEPH. ENGLISH.

Witness:

EXHIBIT C.

Note	$20,000	
Interest	207	12
Check	5,000	
Check	10,000	
"	162	01
Currency	5,000	
D'ft	9,630	87
	50,000	00

For Robinson's check, $50,000.

29 *Defendant's 2d exception.*

After the evidence set out in defendant's 1st bill of exceptions, made part hereof, the said witness, Sherman, having testified on cross-examination, among other things, that, on his first visit above-mentioned to the National Bank of the Metropolis, on the morning of the 27th of February, 1866, he did not know who was the owner of the shares of stock to be purchased by him, and deposited as collateral for the loan to him as alleged, and had never entered into any treaty or negotiation for the purchase of said stock, except that he had been informed by Leonard Huyck that he could purchase 200 shares of said Merchants' Bank stock on favorable terms, and he went to see if he could borrow the money, and that his first knowledge as to who was the owner of said 200 shares of stock was upon said certificate being handed to him as aforesaid by said Leonard Huyck, president as aforesaid, when witness found
30 that said stock belonged to Z. English, a director of said Merchants' National Bank, but that he had had no treaty or negotiation with said English for the purchase of said stock. The pl'ff, by his counsel, asked the witness, on reëxamination, what was said by said Huyck at the time he handed said certificate to the witness touching the sale, delivery, and price of the stock; which question was objected to but the court overruled the said objection, and held that the declarations of Huyck, professing to act as agent of English, made at the time of the sale were part of the transaction and admissable; whereupon the witness testified that, upon tendering the said certificate to him, Huyck stated that English was compelled to sell the stock, and, in order to get the money, was willing to give the purchaser the dividend of $1,000 which had been declared.

And to the said ruling and the admissibility of said testimony in pursuance thereof the defendant excepts, and prays the court to sign, seal, and cause to be enrolled this his second bill of exceptions; which is done accordingly this 29th day of December, 1868.

D. K. CARTTER, [L. S.]
Chief Justice.

31 *Defendant's 3 exceptions.*

In addition to the evidence set out in the defendant's 1st and 2d bills of exception, hereby made part hereof, the witness, Sherman, having testified in chief that, when he resold the said drafts, he went to the Merchants' National Bank and delivered the said drafts to said Leonard Huyck, the president of the bank, and that a few minutes after said delivery the said Z. English entered the banking house of said bank, and that thereupon said Huyck delivered the said drafts to the said English, and that the latter immediately went to the desk of the receiving teller and delivered the said drafts to him. The plaintiff, by his counsel, then asked the witness for what purpose the said drafts were delivered to said English; which question was objected to by the defendant, but the objection was overruled, and the question allowed to be put and answered to the effect that the said drafts were delivered to said English in payment for said two hundred shares of stock.

32 And to the said ruling of the court and the admissibility of said evidence the defendant excepts, and prays the court to sign, seal, and cause to be enrolled this his third bill of exceptions; which is done accordingly this 29th day of December, 1868.

D. K. CARTTER. [L. S.]

Defendant's 4th exceptions.

In addition to the evidence set out in the defendant's 1st, 2d, & 3d bills of exceptions, hereby made part hereof, the witness Sherman, having testified on cross-examination that when said drafts were delivered by him to said Leonard Huyck, and by him to said English, and by said English to the receiving teller, they were not indorsed by the witness as cashier or otherwise; and that said drafts were subsequently indorsed by him as cashier after the banking house had closed, but on the

33 day on which they were received, and were, on being so indorsed, enclosed by him in letters to the respective agents of the Merchant's National Bank in Baltimore and Philadelphia, for collection. The said witness was, thereupon, asked the reason why said drafts were not endorsed when they were given to said English; which question was objected to by the defendant, but the objection was overruled and the question allowed to be put, and was answered by the witness to the effect that there was no need of endorsement when the drafts were placed to the credit of said English on the books of the bank as cash, and when they stood in the name of said witness as cashier, subject to the use of the bank after said credit had been given that English might check for it.

To which ruling and the admissibility of said evidence thereupon the defendant, by his counsel, excepts, and prays the court to sign, seal, and cause to be enrolled this his 4th bill of exceptions; which is done accordingly this 29th day of December, 1868.

D. K. CARTTER, [SEAL.]
Chief Justice.

34 *Plaintiff's statement of the evidence.*

And thereupon, in addition to the evidence set out in the defendant's 1st 2d, 3d, and 4th bills of exception, hereby made part of this statement, the plaintiff gave evidence tending to show that the said loan was entered in a memorandum book kept by the National Bank of the Me-

tropolis, and wherein were entered all notes given for advances made, and that the entry in said book was in the name of said Sherman individually, and not as cashier; and further, that, as shewn by the books of the Merchant's National Bank, there was placed to the credit of said English on the 27th of February, 1866, $20,000, upon his deposition said two drafts, which he subsequently checked out; and further, that, on the same day, there was placed to the credit of said Sherman the sum of $1,000, the accrued dividend on said stock; and the plaintiff further gave evidence of his appointment as receiver of the Mer-
35 chant's National Bank by reading his commission, made a part hereof, and proved that he had duly qualified as such receiver.

And further read in evidence a petition of the plaintiff and the order of the supreme court of the District of Columbia, authorizing the said Kennedy, as receiver of said bank, certain suits, made a part hereof. And there rested.

36 *Defendant's 5th bill of exceptions.*

And thereupon the plaintiff prayed the court to instruct the jury as follows:

PLAINTIFF'S 1ST PRAYER.—If the jury find from the evidence aforesaid that the note of Charles A. Sherman was passed to and received by the defendant as the evidence of money or negotiable drafts lent to him, and that the sole consideration on which said loan was made was the personal responsibility of said Sherman on said note and the two hundred shares of stock in the National Merchant's Bank, pledged by him to the defendant as collateral security for said loan, then the said Merchant's Bank was in no way chargeable with said note, nor could the same be legally tendered to them by the defendant as part payment of the check of said Robinson, as stated in the evidence, unless the jury shall find from the evidence that said loan was really made
37 to said Sherman in behalf of said Merchant's Bank, and the proceeds thereof went to the use and benefit of said bank.

(Granted, subject to any qualifications in prayer number [one] granted defendant.)

PLAINTIFF'S 2D PRAYER.—If the jury find from the evidence that a loan was made on the 27th Feb'y, 1866, by the defendant on the pledge of 200 shares of stock on the National Merchant's Bank, which stood in the name of Zephaniah English, and that the note of C. A. Sherman was taken by the defendant as evidence of said loan, and if the jury further find from the evidence aforesaid that the said loan was entered in the books of the defendant, as made on C. A. Sherman's note, and that the proceeds of said loan went to the credit of Zephaniah English, and not to the benefit of the Merchant's Bank, then the said note was not
38 chargeable to said bank, and could not be legally tendered as part payment, as stated in the evidence.

QUALIFICATION.—Unless the jury further find the transaction was a bank transaction, and not an individual transaction, on the part of Sherman.

(Granted.)

D. K. CARTTER, [SEAL.]
Chief Justice.

PLAINTIFF'S 3D PRAYER.—If the jury find from the evidence that the loan of the 27th of Feb'y of $20,000, made by Hutchinson, cashier of

the National Bank of the Metropolis, was a personal transaction, in which Charles A. Sherman was acting in his individual and not in his official capacity on behalf of the Merchant's National Bank, then the defendant had no right to credit the amount of said loan on the
39 said check of Robinson of the 2d of May, and neither the cashier, nor the president of the Merchants' National Bank, had any authority to ratify such a payment of said check, so as to bind said Merchant's National Bank.

Granted with the following qualification:

"Without the jury further find from the testimony that the proceeds of the Sherman note went into the assets of the Merchant's Bank."

D. K. CARTHER,
Chief Justice.

Which instructions the court gave with the following qualifications, (which qualifications are appended to the prayers as above set out:)

And to the giving the said instructions as qualified and each and every of them the defendant excepts, and prays the same benefit as if he had accepted thereto in separate bill which is allowed, and further prays the court to sign, seal, and cause to be enrolled this his
40 5th bill of exceptions; which is done accordingly this 29th of December, 1868.

D. K. CARTTER, [SEAL.]
Chief Justice.

Defendant's 6th bill of exceptions.

And thereupon the defendant prayed the court to instruct the jury—

1. That even if the jury shall find from the whole evidence that the defendant was, at the commencement of this action, indebted to the Merchant's National Bank, yet, that the plaintiff, the receiver of said bank, is not entitled to recover in this action in his right as receiver; and thereupon the court refused to give said instructions, or either of them, and to such refusal the defendant excepts, and prays the court to sign, seal, and cause to be enrolled this, his 6th bill of exceptions; which is accordingly done this 29th of December, 1868.

D. K. CARTTER, [SEAL.]
Chief Justice.

41 *Defendant's 7th bill of exceptions.*

And thereupon the defendant further prayed the court to instruct the jury as follows:

If from the whole evidence the jury shall find that the defendant, through its cashier, in good faith, believed that the loan of $20,000 made on the 27th of Feb'y, 1866, was made to the Merchant's National Bank, and, acting upon that belief, drew the two drafts given in evidence for said amount in favor of Charles A. Sherman, cashier, and subsequently on the 1st of May, 1866, deducted the said amount from the Robinson check of $50,000, paying the difference in money, or what was received as its equivalent, and returning by the runner of said Merchant's National Bank the note of C. A. Sherman, and certificate of stock deposited when said loan was made, and that on said last-mentioned day the said C. A. Sherman, cashier of the Merchant's National Bank,
42 called at the banking house of the defendant and refused to allow the amount of said loan to be deducted from said check, and

offered to return said note and certificate, and that the defendant refused to accept said note and certificate, and to pay as demanded, and insisted that the said loan was made to the Merchants' National Bank, and the amount thereof was rightfully deducted, and that on the following day, and pending the difference between the two banks as to whether the *loss* was to Sherman individually or to the Merchants' National Bank, the president of the Merchant's National Bank came to the banking house of the defendant and acquiesced in and accepted the payment of said check by said loan, and declared that said payment as made should stand and adjusted the pending difference, and thereupon requested a new loan on the same stock as security, which defendant refused to make, but consented to make and did make a new loan of $10,000 on different security, as given in evidence, and that the Merchant's
43 National Bank did not subsequently repudiate the action of said president, but accepted said new loan and retained in its possession said note and certificate, and that said bank became insolvent on the 4th of May, 1866, but was in good credit on the 2d & 3d of May, then the said bank was bound by the adjustment or settlement made by its president as aforesaid; which instruction the court refused to give as prayed, but qualified the same as follows: Provided said contract of loan was originally made between the defendant and the Merchants' National Bank, and not with said Sherman, or that the proceeds of said loan went to the benefit of said bank as part of its assets as property.

To which refusal to give as prayed and to said qualifications and each of them the def't excepts, & prays the court to sign, seal, and cause to be enrolled this his 7th bill of exceptions; which is done accordingly this 29th of December, 1868.

D. K. CARTTER, [SEAL.]
Chief Justice.

44 *Defendant's 8th bill of exceptions.*

And thereupon the defendant further prayed the court to instruct the jury, as follows:

If from the whole evidence the jury shall find that the defendant, through its cashier, in good faith, believed that the loan of $20,000, made on the 27th of Feb'y, 1866, was made to the Merchant's National Bank, and, acting upon that belief, drew the two drafts given in evidence for said amount in favor of Charles A. Sherman, cashier, and subsequently, on the 1st of May, 1866, deducted the said amount from the Robinson check of $50,000, paying the difference in money, or what was received as its equivalent, and returning by the runner of said Merchant's National Bank the note of C. A. Sherman and certificate of stock deposited when said loan was made, and that on said last-mentioned day the said C. A. Sherman, cashier of the Merchants' National Bank,
45 called at the banking house of the defendant, and refused to allow the amount of said loan to be deducted from said check, and offered to return said note and certificate, and that the defendant refused to accept said note and certificate, and to pay as demanded, and insisted that the said loan was made to the Merchant's National Bank, and the amount thereof was rightfully deducted; and that on the following day and pending said difference the president of the Merchants' National Bank came to the banking house of the defendant, and acquiesced in and accepted the payment of said check by said loan, and declared that said payment, as made, should stand, and thereupon requested a new

loan on the same stock as security, which the defendant refused to make, but consented to make and did make a new loan of $10,000 on different security, as given in evidence, and that the Merchants' National Bank did not subsequently repudiate the action of said president, but
46 accepted said new loan, and retained in its possession said note and certificate; and that said bank became insolvent on the 4th of May, 1866, but was in good credit on the 2d & 3d of May; then the defendant was authorized to accept and act upon the said declarations of the said president as the decision of said bank touching the said matter in difference, and if the defendant in good faith so acted and accepted, believing the said president, as the organ and financial head of the Merchant's National Bank, declared the decision of said bank in relation to said matter in difference, then the defendant is not chargeable with the amount paid by it with the note and certificate aforesaid; which instruction the court refused to give as prayed, but qualified the same as follows:

Provided the said contract of loan was originally made between the def't and the Merchants' National Bank, and not with said Sherman, or that the proceeds of said loan went to the benefit of the
47 Merchants' National Bank as part of its assets or property. And to said refusal to give as prayed, and said qualifications, and each of them the def't excepts, and prays the court to sign, seal, and cause to be enrolled this his 8th bill of exceptions; which is done accordingly this 29th of Dec'r, 1868.

D. K. CARTTER, [SEAL.]
Chief Justice.

Defendant's 9th bill of exceptions.

Now, therefore, the defendant further prayed the court to amend the 1st instruction granted at the instance of the plaintiff by adding thereto, as follows:

"But if the jury find that said note and stock were paid to the Merchant' Bank as a part payment of the Robinson check, and that the president of said bank assented to said payment, and retained
48 said property, then and in that case it was a good payment, and the plaintiff cannot recover, notwithstanding the cashier may have protested against said payment in manner and form as testified by him." But the court refused so to instruct the jury, but gave the instruction prayed with the following qualification, "that the jury further finds from the testimony that the proceeds of the Sherman note went to the benefit of the Merchants' Bank."

And to the said refusal to give, as prayed, as well as to said qualification, the defendant excepts, and prays the court to sign, seal, and cause to be enrolled this his 9th bill of exceptions; which is done accordingly this 29th of December, 1868.

D. K. CARTTER, [SEAL.]
Chief Justice.

49 *Defendant's 10th bill of exceptions.*

The defendant further prayed the court to instruct the jury as follows:

DEF'T'S 1ST PRAYER.—If from the whole evidence aforesaid the jury shall find that a contract was made the 27th of February, 1866, between the def't and the Merchants' National Bank, represented by C. A. Sherman, its cashier, for the loan by the former bank to the latter of $20,000,

and that an execution of said contract the two drafts of the National Bank of the Metropolis, each for $10,000, and drawn upon Philadelphia and Baltimore to the order of said C. A. Sherman, cashier, were on said day delivered by the National Bank of the Metropolis to the Merchants' National Bank, and upon presentment by the latter to the respective drawees were duly paid, then the Merchants' National Bank thereby became the debtor of the National Bank of the Metropolis in the amount of said loan, and the latter bank was entitled to deduct
50 said amount from any money in its hands belonging to the former bank. And the terms of the said contract, including the parties thereto, could not, after the making thereof, be changed, save by the consent of the contracting parties. And it matters not whether said drafts, or the proceeds thereof, were used by the Merchants' National Bank to pay for the 200 shares of stock mentioned in the evidence, or to enable Sherman to pay for the same; nor what disposition was made by said borrower of said loan as the relation of debtor and creditor established as aforesaid, if the jury shall find the same could not be changed by the substitution of a new debtor in the place of an original debtor without the consent of both parties.

If the jury shall find that the Merchants' National Bank was, by said contract, the borrower, then the defendant, as lender, was under no obligation to see to the application of either the drafts or their proceeds. And in ascertaining who was the borrower by said contract, whilst the admissions of both the def't and the Merchants' National Bank
51 are to be considered, the jury must discard the acts and declarations of either in its favor, not brought to the knowledge of the other, and agreed to or acquiesced in.

(Granted.)

D. K. CARTTER, *Ch'f Justice.*

DEFENDANT'S 2D PRAYER.—If from the whole evidence the jury shall find that the contract of loan was made between the defendant and C. A. Sherman, individually, and if in fact said Sherman was in the transaction the agent of the Merchants' National Bank for the purpose of keeping the stock in question off the market, though he did not disclose his agency, but on the contrary represented to the cashier of the defendant that the transaction was his own, and if the proceeds of the loan went to the benefit of the Merchants' National Bank and became subject to its control and disposition, then the said bank became chargeable with said proceeds, at the election of the defendant, notwith-
52 standing the said proceeds were used by the bank to pay for said stock or to enable Sherman to pay for the same, and notwithstanding the drafts representing the money loaned were allowed by the bank to be used by said Sherman to pay for said stock.

(Granted.)

DEFENDANT'S 3D PRAYER.—If the jury find from the evidence that when the defendant made the loan of $20,000, now in dispute, its cashier was given to understand by Sherman, and did understand that he was making the loan to the Merchants' National Bank, and that in the consummation thereof, defendant delivered to Sherman drafts payable to C. A. Sherman, as cashier, and that said Sherman delivered them to the president of the Merchants' National Bank, as stated on the evidence, then and in that case the defendant is not responsible for the application made by the officers of said bank of the proceeds of said
53 drafts.

And that said loan constituted a debt from said Merchants' Bank to the defendant, which the defendant was authorized to deduct from the Robinson check, and the plaintiff cannot recover.

(Granted.) D. K. CARTTER,
Ch'f Justice.

DEFENDANT'S 4TH PRAYER.—The plaintiff is not entitled to recover unless the jury find from the evidence aforesaid that, prior to the bringing of this action, this note of Sherman and the 200 shares of stock described in the testimony, were tendered by the Merchants' Nat'l Bank or by its receiver to the defendant, and the payment of $20,000 demanded.

To constitute such tender it is necessary that said note and shares should have been sent to the defendant's banking house and actually shown and offered to the officers of the defendant.

(Rejected.) D. K. CARTTER.
Ch'f Justice.

54 DEFENDANT'S 5TH PRAYER.—If the jury find from the evidence aforesaid that, prior to February, 1866, the Merchants' Nat'l Bank had been in the habit of borrowing money of the defendant, through C. A. Sherman, as cashier of said Merchants' Bank, and repaying the same; and if the jury further find that the loan of $20,000, now in dispute, was made by the defendant to said Sherman, as the defendant believed, for the benefit of the Merchants' Bank, then and in that case the Merchants' Bank was liable therefor, and the plaintiff cannot recover.

(Overruled.) D. K. CARTTER,
Ch'f Justice.

DEFENDANT'S 6TH PRAYER.—If the jury find from the evidence that the defendant made the loan of $20,000, now in dispute, to Charles A. Sherman, in his individual capacity, upon the security of his per-
55 sonal note, secured by 200 shares of Merchants' Bank stock, and that said stock belonged to him, then and in that case said Merchants' Bank was in no wise liable for said loan, and said note was not a legal tender for a debt due the Merchants' Bank from the defendant.

But if the jury find from the evidence that the defendant delivered said note and stock to the runner of the Merchants' Bank as a part payment of the Gen'l Robinson check, and that said bank received it from said runner, but on the same and the next day protested against it as being an unauthorized payment, and thereupon tendered the note and stock to the defendant and demanded payment in currency, and that defendant refused to so pay, nevertheless, plaintiff cannot recover in this action, if you further find from the evidence, that, after aforesaid protestations and tender, the president of the Merchants' Bank agreed to retaining said note and stock as a payment on said Robinson check, and did retain them.

(Overruled.) D. K. CARTTER,
Ch'f Justice.

56 And the court granted the 1st, 2d, & 3d instructions prayed, but refused to grant the 4th, 5th, & 6th or either of them, to which refusal the def't excepts, and prays the same benefit as if he had severally excepted to the refusal to grant each of said rejected prayers which is allowed, and the defendant prays the court to sign, seal, and cause to

be enrolled this his 10th bill of exceptions; which is done accordingly this 29th of December, 1868.

D. K. CARTTER, [SEAL.]
Ch'f Justice.

Defendant's statement of evidence.

And thereupon the defendant gave evidence tending to show that, on the 25th or 26th of February, 1866, the said Charles A. Sherman, cashier of the Merchants' National Bank, went to the banking house of the National Bank of the Metropolis, and there had an interview with
57 said Hutchinson, the cashier of said bank, in which said Sherman stated that the affairs of the Merchants' National Bank were in excellent condition, and that it had recently declared a dividend of five per cent., and that said bank wanted to borrow $20,000 for 60 or 90 days upon 200 shares of its stock which was then above par. That thereupon said Hutchinson informed said Sherman that he, Hutchinson, preferred not to make said loan at all, and certainly would not loan for any specific time, but that if it would accommodate said bank he was willing for that reason only to make a call loan for said amount upon said securities; that a day or two after said Sherman called again, and stated that his bank wanted the money which said Hutchinson had consented to loan as aforesaid, and thereupon delivered to said Hutchinson the certificate for said 200 shares of stock and the memorandum note of said Sherman for $20,000; that said Hutchinson then in the presence
58 and hearing of Sherman, handed said certificate of stock and note to one of the clerks, and then told said Frissell, "Mr. Frissell, here is a loan to be made to the Merchants' National Bank for $20,000;" that there was then some conversation as to how said bank would have the said loan, and that said Sherman being willing to take drafts on Baltimore and Philadelphia, each for $10,000, the same were made out in his favor, as cashier, and signed by said Frissell, and delivered to said Sherman, and by him taken away; and that said drafts are the same as are set out in the plaintiff's statement, and that the defendant, through its said cashier, in good faith, believed said loan was made to the Merchants' National Bank, and under such belief, the said drafts were drawn.

That upon the execution of said memorandum note by said Sherman, the same was handed, immediately, to one of the clerks, and it was not observed that said Sherman had omitted to add to his signature
59 to the note and endorsement thereon the usual scratch indicating cashier, nor was the said omission discovered until after the said loan was paid, but that the said note was entered in the bill book from a memorandum endorsed on the envelope handed to him containing the note and stock. That upon presentment of the Robinson check for payment the same was taken up and paid by delivering to the runner of the Merchants' National Bank the currency and evidences of debt, including the $20,000 in controversy, and the certificate of stock as set out in the plaintiff's statement, and that said delivery was accompanied by the pencil memorandum of said Frissell mentioned in said statement, and that the said payment was made in good faith.

That, after three o'clock, when the banking house had closed, said Sherman came to the banking house, and the said Hutchinson having gone home, saw said Frissell, and objected to the payment of the Robinson check in part by said $20,000 note, and said he understood
60 that transaction to be a personal matter, and that he wished the said note and certificate taken back and $20,000 to be paid, which

said Frissell refused to do, and insisted that the loan for which said note and certificate were given was a loan to the Merchants' National Bank, and that said note was properly deducted from the Robinson check, and referred said Sherman to said Hutchinson; whereupon said Sherman left said banking house, but that said Sherman did not offer or show said note and certificate to said Frissell, nor did the latter ever see them after they were given to said runner until at the trial of this cause.

That, on the following day, the 2d of May, 1866, Leonard Huyck, then, and before, the president of the Merchants' National Bank, came to the banking house of the National Bank of the Metropolis, and there had an interview with said Hutchinson and Frissell, in which the pending difference between the two banks was discussed. The plaintiff then objected to any statements and declarations of said Huyck
61 being given in evidence, it being admitted that said Huyck was alive. But the court overruled said objection, and thereupon the def't gave evidence that, at said interview, said Huyck inquired of said Hutchinson how he understood the $20,000 call loan; whereupon the latter detailed the facts, and declared that he never for an instant considered the loan as made to Sherman, individually, but always understood it as made to the Merchants' National Bank, and for its benefit; that Huyck then said that such was the intention when the loan was made, but that Sherman afterwards concluded to buy the said stock, and hence said intention was changed, to which Hutchinson replied that he knew nothing of any change of intention after the loan was made, and that said Huyck thereupon expressed regret at the misunderstanding, and acquiesced in and accepted the payment of the Robinson check in part by said note and certificate, and declared that the transactions understood by said Hutchinson should stand, and that, subsequently, in the same interview, said Huyck remarked that
62 *that* the inconvenience to his bank by making payment of the Robinson check in part by the said $20,000 note was that it did not give the bank enough currency, and that it wanted more currency, and requested said Hutchinson to make the said bank a new loan of $20,000 upon said certificate as collateral, but that said Hutchinson refused to make said new loan, but consented to make and did make a new call loan of $10,000, taking as collateral security sundry notes and bills discounted by the Merchants' National Bank, and then held by it as part of its bills receivable; that said new loan was accepted by said Merchants' National Bank, and afterwards repaid to the defendant, and said note and certificate retained by the Merchants' Bank, and that said bank never disavowed or repudiated the said acts and declarations of its said president in the premises, and that said acts and declarations were accepted by the defendant, through said Hutchinson, its cashier, in good faith, and as an adjustment and settlement of said difference, and as evincing the decision as well of the said president as the
63 bank whereof he was the head, in respect of said difference.

That the said Merchants' National Bank was in good credit and standing on the 2d and third of May, 1866, but failed the following day.

The defendant further offered evidence to disprove that any such conversation took place between said Hutchinson and Sherman on the 27th of February, 1866, or at any time, as is testified to by said Sherman as having taken place on said day when he applied for said loan, and is set out in the plaintiff's statement, or that said Hutchinson ever consented to make said loan to said Sherman individually, or that any such

conversation took place in relation to the form of the drafts, as is testified to by said Sherman and set out in the plaintiff's statement, or that said drafts were made out in favor of said Sherman as cashier for the alleged reason of saving an endorsement, or for any other reason than because said loan was to the Merchants' National Bank.

The defendant further offered evidence tending to disprove that, after said drafts were delivered to said Sherman, and by him handed
64 to Huyck, the president of the Merchants' National Bank on the day of the loan, the said drafts were then or at any time delivered by the latter to said English, either for the purpose of payment for said 200 shares of stock, or any purpose whatsoever, or that the said drafts were ever deposited by said English with the receiving teller or other officer of said bank, as testified by said Sherman and set out in the plaintiff's statement.

The defendant further gave good evidence tending to show that the entry of the note in the memorandum-book of def't was made by a clerk and not by the cashier or assistant cashier; and that, when said note was taken, the business of the defendant was very large, and that the transactions between the defendant and the Merchants' National Bank had been numerous, and that the latter bank in said transactions had been represented by said Sherman, its cashier; and, further, that, on the day after the Robinson check was paid as aforesaid, and when the said interview took place between said Huyck, Hutchinson,
65 and Frissell, the following letter was written by said Sherman to said Hutchinson, and received by the latter:

(See letter below.)

And then the defendant gave evidence by said English that, prior to the 27th Feb'y, 1866, he had authorized said Huyck to sell said certificate of 200 shares of stock and placed him in possession thereof, and that the purchase-money was deposited in said Merchants' Bank to his credit, and checked out by him.

"MERCHANTS' NATIONAL BANK,
"*Washington, D. C., May 2d*, 1866.

"J. B. HUTCHINSON, Esq., *Cashier*.

"DEAR SIR: Your favor of the above date is received.

"Mr. Huyck went some half hour ago to see you, and doubtless is now with you. I do not understand matters connected with Gen'l Robinson's check as you do, but let all be arranged between you and myself. I have never deceived you, nor will I ever. Gen'l Robinson is here and wants money. I have none to give him. There will be a meeting this afternoon at 3½ p. m., of all the bank officers in this city, and you will do me a great pleasure if you will be present.

"Please try and do so, and oblige your warm friend.

"C. A. S."

66 DEFENDANT'S TESTIMONY.

Deposition of John B. Hutchinson.

In the supreme court of the District of Columbia.

JAMES C. KENNEDY, RECEIVER OF THE MERchants' National Bank of Washington,
vs.
THE NATIONAL BANK OF THE METROPOLIS, of Washington, D. C.
} No. 3421. At law.

Deposition under the judiciary act of 1789.

The deposition of John B. Hutchinson, taken before me, I. N. Cardozo, a commissioner duly appointed by the circuit court of the United States for the district of Minnesota, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil cases depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled an act for the more con-
67 venient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th 1789, on the third day of February, in the year of our Lord one thousand eight hundred and sixty-eight, between the hours of 9 a. m. and 6 p. m., to be read in evidence in a certain suit depending in the supreme court of the District of Columbia, at law, wherein James C. Kennedy, receiver of the Merchants' National Bank of Washington, D. C., is plaintiff, and the National Bank of the Metropolis, of Washington, D. C., is defendant.

Did call and cause to be and personally appear before me, at my office, in the city of Saint Paul, in the State of Minnesota, the said John B. Hutchinson, who, being about the age of 32 years, and he having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid,
68 I did carefully examine the said John B. Hutchinson, and he did thereupon depose, testify, and say as follows, viz:

That he lives in the said city of St. Paul, in the State of Minnesota, a greater distance than one hundred miles from the said city of Washington, District of Columbia. Furthermore he saith, my name is John B. Hutchinson; my age is 32 years. I have heretofore been a resident of the city of Washington, D. C., and have been, since October 10th, 1864, the cashier of the National Bank of the Metropolis of said city. In the month of November, 1867, I was compelled to come to St. Paul, in the State of Minnesota, for my health.

On or about the 25th or 26th of February, 1866, C. A. Sherman, then cashier of the Merchants' National Bank of Washington, D. C., came into the office of the National Bank of the Metropolis, of which I was then cashier, and said to me, "that his bank was in a fine condition and doing a fine business, and had recently declared a 5 %. dividend, and that their prospects were bright," and talked at some length on
69 said subject; that there were stockholders in the Merchants' National Bank that the officers of the bank desired to buy out and get rid of, as said parties, or one in particular that he did not name, were troublesome and unpleasant; that the officers of the bank knew Washington merchants (who' he then named, but I cannot remember their names) who would take the stock provided they could get it that the said officers were anxious to have said Washington merchants take said stock, as they would be of benefit to the bank; that said officers were anxious to have the money ready, so that when said objectionable stockholder or stockholders would take par for his or their stock that they could snap them up and thus get rid of them.

Said Sherman, cashier as aforesaid, then said, "It is not proper for a bank to loan or hold its own stock, you know," and gave that as a reason why his bank could not take said stock and pay for it. He
70 then asked me if I would loan his bank $20,000 on 200 shares of its stock for 60 or 90 days, as he thought they could get said amount of stock of an objectionable stockholder within a day or two.

I replied that I did not want to make the loan at all; that I would not loan for any specific time, but if it would accommodate his bank I would, for that reason only, make a call loan for said amount upon said securities.

Within a day or two thereafter said Sherman came into my bank and said that he had secured the 200 shares of the stock of which we had talked, and that he wanted the money. Whereupon he delivered me the 200 shares of stock and a memorandum note for $20,000, and I gave him the money, that is I gave him a draft on the "Central National Bank," of Philadelphia, for $10,000, and a draft on the "Farmers & Merchants' National Bank," of Baltimore, for $10,000, the original of which are here shown me, and by the com'issioner marked Ex-
71 hibits "A and B," and his name signed thereto, and copies thereof I hereunto attach and mark Exhibit "A & B."

My bank held this stock until about the 1st of May, at which time the said loan was paid and the stock taken up by said Merchants' National Bank. Said payment was made as follows: Sherman, cashier as aforesaid, came to me about the 29th or 30th of April, 1866, and informed me that his bank was hard up for currency, and wanted to know if I would have any objection to Gen'l H. L. Robinson, assistant quartermaster, (who had a balance of seventy thousand dollars [$70,000] in my bank,) transfer'ing a part of his balance from my bank to the Merchant's National Bank. (At the same time Sherman advised me that said Robinson had an account at his bank.) I replied that I was perfectly willing. On the next day I went to the office of the Merchant's National Bank and saw Sherman, cashier, and Charles Boteler, vice-president of said bank, and transacted some other business with them. During my pres-
72 ence there Bot'ler or Sherman read me a dispatch or letter from New York, I forget which, from L. Huyck, the president, wherein he stated that *that* he had arranged to get from the Ocean Bank some $130,000, which the Merchants' National Bank would have the next day. Boteler said they had other money coming in; that the said $130,000 would fix them all right, but that they were short of currency for that day; that if Gen'l Robinson, assistant quartermaster, would make the transfer as talked of they would be all right. Sherman said that Huyck was in New York, and Boteler did not know Robinson; that he, Sherman was very busy, and wanted to know if I would not see Robinson and ask him about making said transfer. I declined to do so, saying to Sherman that he was the man to go, as it was his business. I finally said I would see Robinson for him, Sherman, as soon as I found time. Some hours afterwards I went to see said Robinson, and I
73 told him that the Merchants' National Bank was short of currency, and said bank wanted him to transfer a portion of his balance from my bank to said Merchants' National Bank; that I presumed it would be an accommodation to said bank, and that I had no objection to his doing so. This was all I said to him. It was not an unusual thing for officers to transfer their balances or a portion of them, from one to another. It had been repeatedly done with my bank, and I knew of its having been done in other banks. General Robinson replied, "All right; I will do so, and I will take my check down to them." I am quite sure he said nothing else on said subject.

After this conversation I left Gen'l Robinson and returned to my bank. In the afternoon of the same day a check, drawn by J. L. Hodge, paymaster U. S. A., for $10,000, on said Merchant's National Bank, was deposited in my bank to the credit of said Hodge,
74 paymaster; subsequently the check of aforesaid Gen'l Robinson,

assistant quartermaster, on my bank for $50,000 was presented by the Merchant's National Bank, (through one of the clerks, I think,) and was paid by my bank as follows:

1st. 200 shares of stock of said Merchant's National Bank, with the memorandum note for $20,000, it being the call loan as particularly described heretofore.

2d. The aforesaid check of J. L. Hodge, paymaster U. S. A.

3d. And the balance in money.

The next day after this, L. Huyck, president of the Merchant's National Bank, came to see me and said there appeared to be a misunderstanding in reference to the turning in of the $20,000 loan in payment of the Robinson check, and asked me how I understood the $20,000 call loan, whether as a bank transaction or the individual transaction of Sherman. I told him the facts as herein before stated; also, that I never for an instant considered it as a loan to Sherman, but
75 that at the time I made the loan and ever since then I considered that the loan was made to the Merchant's National Bank for its use and benefit. Huyck said that such was the intention at the time the loan was made, but that afterwards Sherman concluded to take the stock himself. I replied that I did not know anything about the change in their intentions. Huyck then said "Very well, as you so understand, let it go; it's all right." He then wanted me to make a new loan to his bank of $20,000 on the security of said 200 shares of stock and $50,000 of Washington & Alexandria Railroad bonds, but I declined to do it, for the reason that I had already loaned as much money as I could well spare, and this ended the transaction. Some months after this I had a conversation with said Sherman on the street in the city of Washington, and he told me that atoresaid loan of $20,000 was made by him in behalf and for the benefit of the Merchant's National Bank, and
76 he has said the same thing to me once or twice since then, but I cannot fix time or place.

At the time the said loan was made I knew that Sherman was not a man of means, &c.; would not have loaned him the money.

(Objected to. Objection sustained.)

At the time I went to see General Robinson in reference to transferring his balance as aforesaid, I did it as a favor to the Merchant's National Bank, and I did not use any inducements or arguments to induce him to do it, but I simply stated to him the facts as hereinbefore stated. It was not an unusual thing for banks to be short of currency. My bank had sometimes been so, and been compelled to get currency of other banks and of the Treasury Department; and I have known other Washington banks to do the same. At the time I went to see Gen'l Robinson, I did not know that the Merchant's National Bank was insolvent. On the contrary, I believed said bank to be perfectly solvent, but I thought that said bank was temporar'ly embar'assed,
77 owing to its having over discounted, which latter fact Huyck had informed me of, and that with a little help they could pull through. A day or two after this, at a meeting of bank officers' in Washington, a true statement of the affairs of said bank was laid before us and I saw that the said bank was insolvent.

The memorandum note for $20,000, executed by Sherman at the time he made the loan on aforesaid 200 shares of stock, did not have the word "cashier," or the usual scratch that is added to his signature, understood to represent cashier, that he was accostumed to make. I did not notice this fact at the time of the execution of the note, and I did not notice it until the loan was paid, when my attention was called

to it. When the terms of the loan had been agreed upon between Sherman and me, as herein before stated, he executed the note
78 and handed it and the stock to one of the clerks of my bank, or handed it to me, and I immediately handed it to the clerk, (book-keeper I think,) and directed the drafts to be issued; said papers were then put in the safe, and remained there until the loan was paid. No one in the bank, to my knowledge, noticed said omission or knew of it until the payment of the loan. If I had noticed said omission before the loan, I would not have made said loan without the addition of said word or scratch. The National Bank of the Metropolis, defendant herein, was at said time doing a very large business, and consequently I did not carefully examine all papers discounted by it, but handed a great deal to my clerks.

J. B. HUTCHINSON.

Subscribed and sworn to before me this 3d day of February, 1868.

I. N. CARDOZO,
U. S. Comissioner, Dist. Minnesota.

79 EXHIBIT A.

No. 347.] NATIONAL BANK OF THE METROPOLIS,
Washington, D. C., Feb. 27th, 1866.

Pay to the order of C. A. Sherman, esq., cashier, ten thousand dollars.

A. S. FRISSELL,
A. Cashier.

To FARM'S' AND MERCHANTS' NATIONAL BANK.
Baltimore, Md.

$10,000.

EXHIBIT B.

No. 348.] NATIONAL BANK OF THE METROPOLIS,
Washington, D. C., Feb. 27th, 1866.

Pay to the order of C. A. Sherman, esq., cashier, ten thousand dollars.

A. S. FRISSELL,
A. Cashier.

To CENT'L NAT'L BANK,
Philadelphia.

$10,000

80 In the supreme court of the District of Columbia.

JAMES C. KENNEDY, RECEIVER OF THE MERchants' National Bank of Washington City,
vs.
THE NATIONAL BANK OF THE METROPOLIS. } 3421. At law.

The deposition of A. Sidney Frissell, of Bergen, New Jersey, taken before me, Tho's Henry Edsall, a notary public, duly commissioned and sworn in and for the city and county of New York, on the second day of April, 1868, in the afternoon, between the hours of three and five, to be read in evidence in a certain suit depending in the supreme court of the District of Columbia, wherein James C. Kennedy, receiver of the Merchants' National Bank of Washington City, is plaintiff, and The National Bank of the Metropolis, is defendant.

Did call and cause to be and personally appear before me, at my of-

fice in the city of New York, and State of New York, the said A. SIDNEY FRISSELL, who, being about the age of twenty-three years, and
81 the said deponent being carefully examined, cautioned, and sworn to tell the truth, the whole truth, and nothing but the whole trouth in the premises, deposes and says that he lives in Bergen, in the State of New Jersey, a greater distance than one hundred miles from the said city of Washington, District of Columbia, and furthermore, he saith:

My name is A. Sidney Frissell; I am twenty-three years old, and I reside at Bergen, New Jersey, which is a greater distance than one hundred miles from Washington, D. C. I was assistant cashier of the National Bank of the Metropolis, of Washington, D. C., from the 15th of June, 1865, until the 1st of February, 1867. I know of the loan of twenty thousand dollars ($20,000) on the two hundred (200) shares of Merchants' National Bank stock which is connected with the matter in dispute in this action; my knowledge whereof is as follows: On or about the 25th or 26th day of February, 1866, Charles A. Sherman, cashier of said Merchants' National Bank, called on John B. Hutchinson,
82 cashier of said National Bank of the Metropolis, at the latter bank, and then and there said parties held a conversation. In the midst of said conversation, and in the presence of said Sherman, said Hutchinson handed me a sealed envelope, on which was endorsed a memorandum, that it was a call loan for $20,000 on 200 shares of Merchants' National Bank stock; and said Hutchinson then said to me, in the presence and hearing of said Sherman, that he had loaned twenty thousand dollars to the Merchants' National Bank on two hundred shares of its stock, and directed me to make out the drafts therefor.

Whereupon I drew and signed two drafts, as follows:

One for ten thousand dollars ($10,000) on the Farmers' and Merchants' National Bank of Baltimore, and another for ten thousand dollars ($10,000) on the Central National Bank of Philadelphia—both payable to the order of C. A. Sherman, cashier. (The originals of the same are now shown to me. The commissioner has marked them, respectively, Exhibits "A" and "B," and true and correct copies thereof are
83 hereto attached, and marked respectively Exhibit "A" and "B.") I then handed said drafts to said Sherman, who received them and took them away.

I was guided in drawing said drafts as aforesaid, by the memorandum on the said envelope, and from the instructions of said Hutchinson imparted to me as aforesaid. It was the custom of Hutchinson when he made a loan on collaterals, to put them in an envelope, seal it up, and make a memorandum of its contents, &c., on the outside of the envelope. I do not know where said envelope is, but I have no doubt that it was destroyed long ago. It was undoubtedly destroyed when the loan was paid.

The said envelope with its contents, was then put in the safe of said Bank of the Metropolis, where it remained until the loan was paid. I always supposed that the aforesaid loan was a loan to the Merchants' National Bank, and no one ever suggested or pretended that said
84 loan was any other than a Merchants' National Bank loan until after said loan was paid.

On or about the first day of May, J. L. Hodge, paymaster U. S. A. deposited in our said bank his check on the Merchants' National Bank for about seventeen thousand dollars, ($17,000,) for which sum we gave said Hodge credit on his account. Later in the same day, a messenger of the Merchants' National Bank presented to the National Bank of the

Metropolis a check for fifty thousand dollars, ($50,000,) drawn by H. L. Robinson, A. Q. M., on said Bank of the Metropolis to the order of C. A. Sherman, cashier of the Merchants' National Bank. The check was not indorsed and therefore I refused to pay it; whereupon the messenger took it away, got it indorsed and again presented it. I asked the messenger how he would have it paid. He replied that Mr. Sherman said pay it in any way that is convenient to the bank, and thereupon I paid said check as follows:

Call loan of $20,000 on 200 shares of stock of Merchants' Na-
85 tional Bank as aforesaid, with interest thereon added.

Check of J. L. Hodge, paymaster U. S. A., for about $17,000 as aforesaid.

And the balance in cash—which said payment was accepted by the messenger and by him carried away.

The next day, L. Huyck, president of said Merchants' National Bank, came into our bank and said to Hutchinson and me that there appeared to be a misunderstanding as to the payment of said twenty thousand dollars ($20,000) loan on the Robinson check, and that he was sorry there should be such a misunderstanding. We all talked about it a few minutes, and we, (that is, Hutchinson and I,) stated that we always understood and considered it as a loan to his bank; whereupon Huyck said that such was the intention at the time the loan was made, but that afterwards Sherman concluded to take the stock himself. Hutchinson replied that he did not know anything about that, and then re-
86 peated his former statement as to the making of said loan.

Whereupon Huyck said—"Very well. If you so understand it, let it go; it is all right," or words to that effect, and thereby giving us to understand that he accepted our action in the premises.

A conversation then followed as to a new loan, which however did not result in any action.

I was present at an interview between said Sherman and Hutchinson the afternoon before the said Robinson check was given, at which interview Sherman made an explanation as to the condition of his bank, the said Merchants' National Bank, from which it appeared that said bank was not only solvent, but was doing a prosperous business, but that it was temporarily embarrassed by reason of over discount made by the new board of directors, and heavy loans made to Bayne & Co., of Baltimore. But Sherman assured us that Bayne & Co. were solvent and would pay their indebtedness to said bank. Then followed a great deal of further conversation to the same effect. We concluded from Sherman's statements and the exhibits he furnished us that said bank
87 was solvent and that with help it could work through.

At the time I paid the Robinson check as aforesaid, I had no idea that said Merchants' Bank was insolvent, but supposed it to be temporarily embarrassed as aforesaid.

It was not an unusual thing for disbursing officers of the United States to transfer funds from one bank to another. I have known it to be done in several instances.

A. SYDNEY TRISSELL.

Taken, reduced to writing, and by the said deponent subscribed and sworn to this second day of April, 1868.

THO'S HENRY EDSALL,
Notary Public, N. Y. City, &c.

88 *Affidavits for attachment.—Filed Jan'y 19th, 1869.*

In the supreme court of the District of Columbia.

JAMES C. KENNEDY, RECEIVER OF THE MERCHANTS' NATIONAL BANK, pl'tff
against
THE NATIONAL BANK OF THE METROPOLIS, def't. } At law. No. 3421.

The plaintiff makes oath that he has a just right to recover against the defendant what he claims in the declaration, to wit, the sum of $20,000, with interest from 1, 1866, for the cause of action therein stated; and that said cause of action is founded upon the receipt of $20,000 had and received by the defendant to the use of the National Merchants' Bank of Washington, whereof this defendant, *as* receiver, on or about the 1 May, 1866, and that the defendant has funds in the District of Columbia, which it is now seeking to withdraw to the city of New York, or elsewhere, in anticipation of a judgment in the the above case; that the plaintiff has been credibly informed and
89 believes that the defendant hopes by the withdrawal of said funds from this district to avoid the payment of the indebtedness set out in said declaration; and further, that defendant has, so far as it has been able, removed all of its effects from this District for the purpose aforesaid; and plaintiff states that defendant has received and is about to remove some of this property from the District of Columbia, so as to defeat just demands against it.

JAMES C. KENNEDY, *Receiver.*

Subscribed & sworn before me, 18 January, 1869.
[SEAL.] CHA'S BRADLY, *Notary Public.*

And I, Henry C. Towers, witness for the plaintiff, make oath that the grounds upon which the plaintiff bases his aforesaid affidavit, and those stated in the declaration are true, and that the plaintiff has a just right to recover against the defendant, as affiant verily believes, the money claimed in the declaration, for the cause therein stated; that this affiant has the same information as set out in preceding affidavit hereto attached, and that the defendant has removed, is about to remove, some of its property from the District of Col'bia, so as to defeat just demands against it.

HAR'Y C. TOWERS.

Subscribed & sworn to before me this 18th of Jan'y, 1869.
CHA'S BRADLY,
Notary Public.

90 *Plaintiff's bond for attachment.—Filed Ja'y 19, 1869.*

In the supreme court of the District of Columbia.

JAMES C. KENNEDY, RECEIVER OF THE MERCHANTS' NATIONAL B'K, pl'ff
vs.
THE NATIONAL BANK OF THE METROPOLIS. } At law. No. 3421.

The plaintiff, James C. Kennedy, receiver of the Merchants' National Bank, and James C. Kennedy, his surety, hereby undertake, for them-

selves and each of them, their and each of their heirs, executors, and administrators, to make good all costs and damages which the defendant may sustain by reason of the wrongful suing out of the attachment this day issued against said defendant.

JAMES C. KENNEDY,
As receiver of the Mechanics' *National Bank.*
JAMES C. KENNEDY.

Approved, Jan'y 18, 1869.

R. J. MEIGS, *Clerk.*

91 *Order for attachment.—Filed Ja'y* 19, 1869.

The clerk will issue attachment against defendant.

R. T. MERRICK.
BRENT & PHILLIPS,
For Pl'ff.

JAN'Y 18, 1869.

Writ of attachment.—Issued Ja'y 19, 1869.

Supreme court of the District of Columbia.

JAMES C. KENNEDY, RECEIVER, &c.,
vs.
THE NATIONAL BANK OF THE METROPOLIS.

The President of the United States to the marshal of the District of Columbia, greeting:

You are hereby commanded to attach, seize, and take into your custody the defendant's lands, goods, chattels, and credits which shall be found in this District, to the value of $20,000\frac{00}{100}$, with interest from 2d
92 May, 1866, the amount of the plaintiff's demand against the defendant, as shown by his affidavit, duly supported and filed; and the further sum of $500 for the costs and charges which may or shall accrue in the premises; and the same, so attached, safely keep, subject to the orders of the court, unless the defendant deliver to you, to be filed herewith, his undertaking, with sufficient surety or sureties, to satisfy and pay the final judgment of the court against him. And warn the person or persons in whose possession you may attach the defendant's goods, chattels, and credits, to appear before said court at its first special term after service of this writ on him, to show cause why said goods, chattels, and credits so attached should not be condemned, and execution thereof made.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

Marshal's return.

"Attached credits in the hands of Francis E. Spinner, & sum'd him as garnishee.

"D. S. GOODING, *Marshal.*

"JAN'Y 19, 1869."

93 *Notice of motion to quash attachment.—Filed Feb'y 1st, 1869.*

KENNEDY, RECEIVER,
vs.
THE NAT'L BANK OF THE METROPOLIS. } At law. No. 3421.

You are hereby notified that on Thursday next, the 4th day of February, A. D. 1869, at 10 o'clock a. m., a motion will be made before Chief Justice Cartter, in chambers, to dissolve and quash the attachment issued on the 19th of Jan'y, 1869, in the above-entitled case. Herewith is a copy of the affidavit this day filed, which will be made the basis of said motion.

DAVIDGE & WILSON, *for def'ts.*

To BRENT & MERRICK, *atty's for pl'ff.*

Service acknowledged, Feb'y 1st, 1869.

BRENT & MERRICK,
For Kennedy.

94 *Affidavit of Theo. M. Davis.—Filed 1st Feb'y, 1869.*

In the supreme court of the District of Columbia.

JAMES C. KENNEDY, RECEIVER, &C.,
against
THE NATIONAL BANK OF THE METROPOLIS. } 3421. At law.

CITY & COUNTY OF WASHINGTON,
District of Columbia, ss:

THEO. M DAVIS, being duly sworn, on his oath says:

That, on or about the 1st day of October, 1867, the National Bank of the Metropolis, of Washington, D. C., then being in liquidation under and by virtue of the 42d section of the national currency act, by its directors appointed affiant the attorney-in-fact of said bank, with full power and authority to take possession of all bills receivable and accounts due said bank, and to collect and compromise the same, and also fully empowered and authorized affiant to take charge,
95 manage, and close up the affairs of said bank, pay its debts, and account to stockholders for any balance over, &c., &c.

Affiant further says that from said date up to the present time he has acted under aforesaid authority, and has exercised full and exclusive control of all the matters connected with the assets or debts of said bank, and that no disposition of any of said assets has during said time been made without his knowledge and consent, and that he now is in full possession of said assetts, and has full and exclusive control of its affairs.

Affiant further says, and positively asserts the truth to be, that the National Bank of the Metropolis, defendant herein, has not removed, nor is about to remove, some or any of its property from this, the District of Columbia, so as to defeat just demands against it. Neither is said bank seeking to withdraw to the city of New York or elsewhere any of its funds in anticipation of a judgment against it in this cause, with the intent to avoid the payment thereof, or of any other
96 debt, neither is this affiant attempting to so do. On the contrary, affiant is using his best efforts to collect the assetts and pay all the debts of said bank.

Affiant further says that he has already paid to the United States some five hundred thousand dollars, being the full amount due, and has paid all other undisputed claims against said bank, with one or two exceptions, which are in process of settlement; that the amount of assets now in his hands uncollected, but in suit or in process of settlement, is some two hundred and seventy-five thousand dollars, and the amount of cash, invested in U. S. bonds, the property of said bank, now held by the U. S. Treasury, is some forty thousand dollars; and that the stockholders in said bank are, affiant verily believes, responsible for any assessment to which they may be liable under the nat'l currency act.

Affiant further says that, as he verily believes, after frequent and careful investigation of the affairs of said bank, that enough will
97 be realized from aforesaid assets to pay all of the debts of said bank in full, including the plaintiff's claim, and leave a balance over.

Affiant further says that said bank has in the possession of the United States $202,000 United States bonds, deposited exclusively for the purpose of securing the circulation of said bank, to wit, $180,000, as provided for in section 26 of said nat'l currency act, and that the present value of said bonds, over and above said circulation, is some $40,000; that the plaintiff in this action has caused a writ of attachment, issued out of this court, to be served on F. E. Spinner, Treasurer of the United States, and seek thereby to prevent defendant from taking possession thereof.

Affiant further says that no assets of said bank have ever been taken out of this district, except for the purpose of collection or settlement, and with the intention to apply the proceeds to the payment of the debts of said bank, and that such assets so taken were the notes of or accounts against debtors who did not reside in this District, or, if they did, had property elsewhere, against which the bank pro-
98 ceeded, and therefore it became necessary to so remove said assets.

And affiant further says that he has now no intention of taking any of the assets of said bank out of this District, except for the purpose of collection, when it may be necessary so to do, and the payment of the just debts of said bank; but it is the intention of affiant to apply the proceeds of said bonds and other assets to the payment of the debts of said bank, and his present effort to obtain possession of said bonds is for said purpose, and none other.

THEO. M. DAVIS,
Att'y-in-fact for National Bank of Metropolis.

Sworn and subscribed before me this 1st day of February, 1869.
ARTHUR SHEPHERD, *J. P.* [SEAL.]

99 *Motion to quash attachment.—Filed Feb'y* 9, 1869.

KENNEDY, RECEIVER,
vs. } 3421. Law.
THE NATIONAL BANK OF THE METROPOLIS.

And now comes The National Bank of the Metropolis, by Davidge & Wilson, its attorneys, and moves the court that the writ of attachment issued in the above-entitled cause and returned be quashed.

DAVIDGE & WILSON.

Order quashing attachment.—Filed Feb'y 10, 1869.

KENNEDY, RECEIVER,
vs
THE NATIONAL B'K OF THE METROPOLIS. } No. 3421. At law.

The motion to quash the writ of attachment in the above-entitled cause having been heard upon the affidavits filed and oral evidence submitted to the court, and the court being of opinion that the allegations of the affidavit filed in support of said writ are not sus-
100 tained by the proofs: It is thereupon considered by the court that said writ of attachment be and the same is hereby quashed.
By order of the court.

D. K. CARTTER,
Ch'f Justice.

Prayer of appeal from order to quash attachment.—Filed Feb'y 10, 1869.

KENNEDY, RECEIVER,
vs.
THE NAT'L BANK OF THE METROPOLIS. } 3421. At law.

The plaintiff excepts to the order and prays an appeal from said order.

R. T. MERRICK,
Attorney for Pl'ff.

Proceedings before general term.

SATURDAY, *March 5th* 1870.

Session resumed pursuant to adjournme't. Present, Chief Justice Cartter, and justices Olin, Fisher, & Wylie.

101 JA'S C. KENNEDY, RECEIVER,
vs.
THE NATIONAL BANK OF THE METROPOLIS. } 3421. At law.

And now come as well the plaintiff as the defendant, by their respective attorneys, and thereupon, because the court is equally divided as to the matters for error assigned, it is considered by the court, that the plaintiff recover against the def't, twenty thousand dollars, with interest thereon from May 2, 1866, besides costs, in manner and form aforesaid found, and $ for the costs aforesaid, and that he have execution thereof.

102 In the supreme court of the District of Columbia, the 29 day of November, 1870.

JAMES C. KENNEDY, RECEIVER OF THE MERchants' National Bank of Washington, D. C.,
vs.
THE NATIONAL BANK OF THE METROPOLIS, OF Washington, D. C. } At law. No. 3421. In error.

Know all men by these presents that we, Henry Beard and Nathaniel Wilson, of Washington, District of Columbia, are bound unto the

above-named James C. Kennedy, receiver of the Merchant's National Bank, of Washington, D. C., in the sum of two hundred & fifty dollars, to be paid to the said James C. Kennedy, receiver of the Merchants' National Bank of Washington, D. C., his executors or administrators. To which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our, and each of our heirs, executors. and administrators, firmly by these presents. Sealed with our seals, and dated this 29th day of November, 1870.

Whereas the above-named National Bank of the Metropolis, of Washington, D. C., hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is, that if the above-named National Bank of the Metropolis, of Washington, D. C., shall prosecute its said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HENRY BEARD. [SEAL.]
NATHANIEL WILSON. [SEAL.]

Sealed and delivered in presence of—
HENRY R. ELLIOTT.

1870, Nov. 29. Approved.

D. K. CARTTER,
Ch'f Justice.

103 *Clerk's certificate.*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals of which the foregoing writings are true and complete copies are on file and of record in the clerk's office of said court, and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled:

JAMES C. KENNEDY, RECEIVER OF THE MERchants' National Bank, of Washington, D. C.,
vs.
THE NATIONAL BANK OF THE METROPOLIS. } No. 3421. At law.

In testimony whereof, I hereto subscribe my name and affix the seal of said court, this 20th day of December, 1870.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 432. The National Bank of the Metropolis, plaintiff in error, vs. James C. Kennedy, receiver of the Merchants' National Bank, &c. Dis't of Columbia sup. court. Filed 20th December, 1870.